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OFFICE OF PETITIONS

In re Application of
Seong-Jin Jang
Application No. 10/780,057
Filed: February 17, 2004
Attorney Docket No. 5649-1204

: DECISION DISMISSING PETITION

This is a decision on the petition filed June 1, 2004 under 37 CFR 1.10(c), requesting that the above-identified application be accorded a filing date of February 16, 2004, instead of the presently accorded filing date of February 17, 2004.

Petitioners request the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on Monday, February 16, 2004, pursuant to the requirements of 37 CFR 1.10. Petitioner submitted, *inter alia*, a copy of the application transmittal sheet and a copy of the Express Mail Pick Up Service Statement, both bearing "Express Mail" tracking number EV381446125US but petitioner has not submitted a copy of the Express Mail mailing label as required for a petition under 37 CFR 1.10(c).

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date.¹ (emphasis added)

Paragraph (c) of 37 CFR 1.10 states that:

Any person filing correspondence under 37 CFR 1.10 that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show a discrepancy between the filing date accorded by the Office to

¹See 37 CFR 1.6(a).

the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the papers or fees that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

A grantable petition under 37 CFR 1.10(c) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service **prior to the last scheduled pickup for that day**. In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

At the outset, it is noted that petitioners have not provided a true copy of the "Express Mail" customer label nor explained why a copy of the Express Mail customer label showing the "date in" has not been provided. Any renewed petition must be accompanied by a copy of the Express Mail label showing the "date in" as completed by the USPS.

The petition filed on June 1, 2004, is not accompanied by the corroborating evidence required by the rule. The circumstances of this case instead lead to the conclusion that petitioner deposited the correspondence in an Express Mail drop box rather than directly with USPS employees, on a day when the post office was closed, Monday, February 16, 2004 which was President's Day.

The general rule is that there is no mail pickup from an Express Mail box or otherwise on a day when the federal government is closed for a holiday. Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly

marked.²

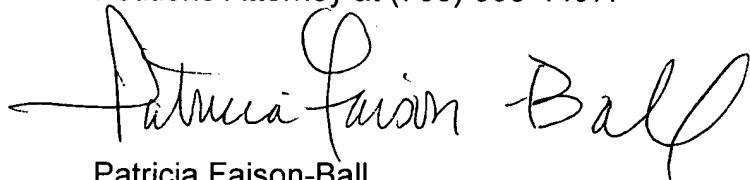
Petitioners obviously have a corporate account and therefor could easily show that the post office box used, had a pick-up on the holiday, even though the post-office was closed, the schedule of pick-ups for that day, and that the package was deposited prior to the last pick-up for Monday, February 16, 2004.

Accordingly, the petition is **DISMISSED**.

A fee in the amount of \$130.00 is due for this petition and has been charged to deposit account no. 50-0220.

The application has been accorded a filing date of February 17, 2004 and no evidence has been submitted to accord any other filing date other than February 17, 2004. This application is being forwarded to Technology Center 2819 to be examined in due course.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.



Patricia Faison-Ball
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Office of Petitions

²37 CFR 1.10(b).